No. 7[illegible]

SUPREME COURT OF THE UNITED STATES

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AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, A SUBORDINATE OF MISSOURI TO INTERNATIONAL FUR & LEATHER WORKERS UNION OF UNITED STATES AND CANADA, *Petitioner-Intervenor*,

*v.*

NATIONAL LABOR RELATIONS BOARD AND LANNOM MANUFACTURING COMPANY,
*Respondents*

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REPLY BRIEF OF RESPONDENT, LANNOM MANUFACTURING COMPANY

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*Attorneys for Respondent.*

# SUPREME COURT OF THE UNITED STATES

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AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICAN, AFL-CIO, AS SUCCESSOR BY MERGER TO INTERNATIONAL FUR & LEATHER WORKERS UNION OF UNITED STATES AND CANADA, *Petitioner-Intervenor,*

*v.*

NATIONAL LABOR RELATIONS BOARD AND LANNOM MANUFACTURING COMPANY,
*Respondents*

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## REPLY BRIEF OF RESPONDENT, LANNOM MANUFACTURING COMPANY

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### Respondents' Statement of the Case

On or about February 15, 1951, this Respondent reduced its working force due to the shortage of raw materials brought about by governmental control. The petitioning union filed a charge with the National Labor Relations Board on April 18, 1951, alleging that this Respondent was guilty of unfair labor practices as set out in Section 8 of the National Labor Relations Act. Several amendments were filed to the charge and a complaint was issued by the Board on February 27, 1952.

Ben Gold, former President of the charging union, filed his affidavit as required under the Act on or about August 29, 1950, and based upon this affidavit, the petitioning union was held by the Board to be in compliance.

The original charge was filed on April 18, 1951 and the

first amended charge was filed on June 18, 1951, the second amended charge was filed on November 13, 1951, and a third amended charge was filed on February 18, 1952. The Board treated the charge as one charge. This was in conformity with the Board's general theory that amendments relate back to, and become a part of the original charge. *NLRB* v. *Osbrink,* 218F (2D) 241.

The original charge and the first amendment were filed during the period of August 1950 to August 1951 while Gold's first affidavit was in effect. The second and third amendments were filed during the effectiveness of the second affidavit, but all of the matters and things alleged in said amended charges occurred more than six months prior to the filing dates of the second and third amendments to the charge and, therefore, said amended charges cannot stand as separate and independent charges because of the six month limitation contained in Section 10 of the Act.

Although the complaint was not issued until February 27, 1952, the complaint, as a matter of law, must be predicated upon a charge filed within six months of the alleged events. It necessarily follows, therefore, that the entire proceeding of the Board, of necessity, was predicated on the compliance status of the charging union during the effective period of Gold's first affidavit which was the affidavit made the basis of his criminal conviction, which conviction has now been affirmed by the Court of Appeals for the District of Columbia.

In addition to Mr. Ben Gold having filed a false and perjured affidavit, the Respondent in this case at the hearing before the Board was prepared to prove that there was in fact an officer of the charging Union who had not filed the affidavit as required by Section 9(h) of the Act.

Counsel for the Board and counsel for Respondent entered into a stipulation in lieu of calling the witness and stipulated that the witness would testify that:

"A Mr. Irving Potash, at the meeting in June 1950, declined to surrender his card as a member of the communist party and prior to that time had been a vice president of this union, and his activities were to supervise and in fact run and control the New York Furriers Joint Board. Rather than surrender his communist party at that meeting he gave up his title of vice president, but that he retained his same job and performed the same duties; that he had been performing prior to giving up his title as a vice president; . . . . . .

Now, I understand that Mr. Hamilton has agreed to stipulate that he would so testify, but does not agree, of course, as to the facts and he is objecting to the relevancy and materiality and competency of the testimony if actually offered. Now is that stipulation correct?

Mr. Hamilton: That is correct. General Counsel is willing to stipulate that if this witness were called, he would testify as outlined by Mr. Harwood, but by entering into the stipulation General Counsel is not waiving any objections which he would and does make as to the materiality, relevancy and competency, admissibility and anything else on this testimony.

Mr. Harwood: I would like to supplement one thing and say that Mr. Irving Potash who was referred to in the stipulation was one of the eleven communists who was a defendant in the rather notorious trial before Judge Medina and was convicted and is now serving time in the penitentiary.

Trial Examiner Wilson: All right. That stipulation will be received."

## Counter Statement of Questions Presented

1. Whether a Court of Appeals must entertain a petition for enforcement of an order of the National Labor Relations Board when the *petition* shows on its fact that the

charging Union was not in compliance with the requirements of Section 9(h) of the Labor Management Relations Act at the time the unfair labor practice charge was filed, because the President of the Union was guilty of perjury in signing the affidavit required by said Section. Respondent insists that the answer should be "no".

2. Whether a Court of Appeals must entertain a petition for enforcement of an order of the National Labor Relations Board when the *record* shows that the charging Union was not in compliance with the requirements of Section 9(h) of the Labor Management Relations Act at the time the unfair labor practice charge was filed, because a former Vice President had refused to sign the affidavit required by said Section but continued to perform the duties of Vice President. Respondent insists that the answer should be "no".

## Reasons for Denying the Writ

In addition to the reasons so ably presented in the opinion of the Court of Appeals for the Sixth Circuit, this Respondent insists that there are two other grounds which are sound reasons for sustaining Respondent's motion to dismiss.

### I

The dissenting opinion of Judge Stuart in the Court of Appeals is based wholly on the fact that the complaint was issued during a period subsequent to the effective date of the 1950 affidavit which was the basis of Gold's conviction. Judge Stuart pointed out that if the complaint had issued during the 12 month period that this false affidavit was in effect, the question would be clear-cut.

The original charge in the cause was filed on April 18, 1951. This was clearly during the effective period of Gold's 1950 affidavit. An amended charge was filed on

June 18, 1951, still within the period of the 1950 affidavit. A second amended charge was filed November 19, 1951 and a third amended charge was filed on February 18, 1952.

The second amended charge was filed during the period of Gold's subsequent affidavit but was filed more than six months after the occurrence of the events alleged as unfair labor practices. The same is true of the third amended charge.

The second and third amended charges, filed during the effective period of Gold's second affidavit, cannot be treated as original charges because they were filed more than six months after the occurrence of the events alleged to be unfair labor practices.

Of necessity, therefore, these charges had to be received under the relating back theory which has been approved by the Courts. The Board itself treated the amended charges as becoming parts of the original charge which was timely filed.

It, therefore, follows that the complaint which was issued on February 27, 1952, of necessity, was predicated upon the original charge, as amended, otherwise the complaint could not issue because of the six month limitation contained in Section 10(b) of the Act. With the foregoing in mind, it is quite clear that this entire proceeding must of necessity be predicated upon the compliance status of the charging union during the effective period of Gold's first affidavit which was the affidavit upon which his conviction was based.

II

The charging Union was not in compliance for another entirely different reason. The records show that Irving Potash was exercising the duties of an officer but had not in fact filed the required affidavit.

In the case of *NLRB* v. *Coca Cola Bottling Company*, decided by this Court on February 27, 1956, the Court

clearly held that a Respondent in an unfair labor practice case is entitled to show that certain officers of the charging union have not filed the affidavit required in Section 9(h) of the Act. The record in this case, as hereinabove shown, without dispute, shows that one of the most notorious communists in the United States, Irving Potash, had not filed the required affidavit. Potash had been a vice president of the charging union but was such a rabid communist that he refused to surrender his membership in the communist party and in an effort to circumvent the requirements of Section 9(h) of the Act, merely surrendered his title as vice president but retained all of his duties with the charging union without change. Under the circumstances, the charging union was not in compliance with the filing requirements of the Act.

The petition endeavors to create a conflict between the decision of the Sixth Circuit in the case and the decisions of the Court of Appeals for the District of Columbia. There is no such conflict because the litigation before the Courts for the District of Columbia involved the future compliance status of the Fur and Leather Workers Union. Furthermore, the Courts for the District of Columbia merely held that the NLRB, *an administrative agency,* could not deny the compliance status of the Union because of Gold's conviction for filing a false affidavit in 1950. This is not at all inconsistent with the *judiciary* refusing to grant equitable relief to the charging Union, under the facts of this case. As pointed out above, if the charging union was not in compliance from August 1950 to August 1951, this entire proceeding is prohibited by the expressed provisions of the Act.

A large part of the petition argues the question of future compliance of the charging union rather than with the compliance status of the Union during the period of time involved.

## Conclusion

Respondent insists that the Court should deny the petition.

Respectfully submitted,

CECIL SIMS,
JUDSON HARWOOD,
*Attorneys for Lannom Manufacturing Company.*

## APPENDIX

### Portions of Transcript of Record Relied Upon by Respondent

(R. 51) Mr. Harwood: If the Examiner please, Mr. Hamilton has (R. 52) very kindly consented to a stipulation that will save the Examiner a lot of time and save the Respondent not only time but expense. The Respondent is prepared to offer as a witness, A. H. Raskin, a Reporter for the New York Times, who if called to testify would testify in substance that Mr. Ben Gold, the President of the charging union, the International Fur and Leather Workers Union, has been a member of the communist party, was a member of the communist party for some 25 years and that he readily admitted this in his testimony before a Committee in Congress and during that testimony which was in September 1948, Mr. Gold stated, not only admitted that he was a communist but stated that he would never surrender his communist beliefs and that on or about June 30, 1950, the International Fur and Leather Workers Union, through its central council, or whatever it may be, instructed all of its officers to sign non-communist affidavits in order to comply with the Taft Hartley Act. Mr. Gold on or about August 28, 1950, signed such an affidavit, but at the time he signed it, he made a press release, wherein he stated that his action "was taken for the purpose of technical compliance with the Taft Hartley Law and that it did not involve any renunciation of his belief in communist principals."

A Mr. Irving Potash, at the meeting in June 1950, declined to surrender his card as a member of the communist party and prior to that time had been a vice president of this union, and his activities were to (R. 53) supervise and in fact run and control the New York Furriers Joint

Board. Rather than surrender his communist party, at that meeting he gave up his title of vice-president, but that he retained his same job and performed the same duties; that he had been performing prior to giving up his title as a vice president; and this witness will further testify that Mr. Gold since August 28, 1950, on at least one occasion, had actually attended a meeting of a group of known communists in New York City. This witness is a newspaper reporter and he is available to testify.

Now, I understand that Mr. Hamilton has agreed to stipulate that he would so testify, but does not agree, of course, as to the facts and he (R. 53) is objecting to the relevancy and materiality and competency of the testimony if actually offered. Now, is that stipulation correct?

Mr. Hamilton: That is correct. General Counsel is willing to stipulate that if this witness were called, he would testify as outlined by Mr. Harwood, but by entering into the stipulation General Counsel is not waiving any objections which he would and does make as to the materiality, relevancy and competency, admissibility and anything else on this testimony.

Mr. Harwood: I would like to supplement one thing and say that Mr. Irving Potash who was referred to in the stipulation was one of the 11 communists who was a defendant in the rather notorious trial before Judge (R. 54) Medina and was convicted and is now serving time in the penitentiary.

Trial Examiner Wilson: All right. That stipulation will be received.

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(R. 56) Mr. Harwood: . . . . I would like to go one step further and I believe it will be agreeable—that the Board in making these determinations and considering this matter had available the press release by Mr. Gold at the time

he executed his affidavit as I have stated. Since this matter was published in the newspapers throughout the United States and was given wide publicity.

Mr. Hamilton: Well, I can't stipulate for sure that that is so. I am reasonably certain that it was, because it was a matter of great publicity at the time.

Mr. Harwood: Well, you will stipulate then that it was published widely throughout the United States and went out over various press service wires to the newspapers.

Mr. Hamilton: I will so stipulate.